IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No. 245 of 2004

Judgment reserved on 25.7.2007

Date of decision: 22.8.2007

Mast Ram **…Appellant.**

Versus

State of H.P. **…Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting? No.

For the appellant : Mr. Manoj Pathak, Advocate.

For the respondent : Mr. Som Dutt Vasudeva, Additional Advocate General.

Surjit Singh, Judge

The present appeal is directed against the judgment dated 5.4.2004 of the trial Court, whereby appellant has been convicted of offence under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life and to pay a fine of Rs.10,000/-.

2. First the prosecution version may be noticed. Deceased Sawni, aged about 45 years, was the wife of appellant. Relations between the deceased and the appellant were strained for quite some time. On 24.2.2003 the appellant is alleged to have caught hold of the deceased by her hair and dragged her to a nearby field of one Pardeep Kumar, where he

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Whether reporters of the local papers may be allowed to see the judgment?

stabbed her in the vagina with a knife resulting in sharp incised wound over clitoris extending to and injuring the urethra, slitting the vagina and injuring the vaginal vessels and a few pelvic vessels on the right side of the cut. The doctor opined that the cause of death was sudden hemorrhagic shock due to excessive and torrential bleeding on account of the injury to the blood vessels of external genitalia and pelvic vessels. The time lag between the injury and the death was opined to be a few minutes. Before dragging the deceased to the field, the appellant allegedly locked the door of the room in which his son PW-2 Ramesh was asleep. The deceased when being dragged cried and shrieked. Hearing her shrieks, PW-1 Bhagwan Singh, living at a distance of 30 to 35 yards from the house of the appellant, came out. He noticed the appellant dragging the deceased towards the field of Pardeep Kumar. When he went to the field of Pardeep Kumar, he saw PW-2 Ramesh holding his mother's head in his lap and crying. He felt the pulse of the lady and declared that she was dead. On inquiry PW-2 Ramesh told PW-1 Bhagwan Singh that his father had killed his mother by stabbing her below the abdomen. PW-3 Salochna (wife of PW-2 Ramesh and daughter-in-law of the deceased and the accused) allegedly saw the deceased being dragged by the appellant towards the field. While in police custody the appellant made a disclosure statement leading to the recovery of the knife, allegedly used by him to kill the deceased.

3. During the course of trial, all the three material witnesses namely, Bhagwan Singh (PW-1), Ramesh (PW-2) and Salochna (PW-3) were cross-examined by the prosecution with the leave of the Court, because while PW-1 Bhagwan Singh made a statement which was contrary to the earliest version given by him to the police, vide statement Ext. PA (under Section 154 of the Code of Criminal procedure), PW-2 Ramesh and PW-3 Salochna did not support the prosecution version, at all.

4. Trial Court has convicted the appellant holding that the following five circumstances stand proved against the appellant and these circumstances make complete chain leading to one and only one hypothesis that the appellant murdered the deceased and to no other (hypothesis):-

(i) Appellant was present in the house on the night intervening 23rd/24th February, 2003;

(ii) On 24th February, 2003 when the dead body of the deceased was there in the field of Pardeep Kumar, the appellant even though present in the house, instead of arranging any medical care for Sawni, absconded from the village;

(iii) The appellant went to the house of his daughter married to a man by the name of Guddu and it was from there that he was arrested;

(iv) Appellant made a disclosure statement leading to the discovery of knife Ext. P-11;

(v) As per expert opinion, i.e. the opinion of PW-14 Dr. Rajiv Roy, who conducted post mortem examination, injury to the private part of the deceased could have been caused by means of knife Ext. P-11.

5. As a matter of fact, the circumstances, which have been enumerated as five by the trial Court, are only two, viz. conduct of the appellant in absconding from his house and going to the house of his daughter in a distant village and the recovery of the weapon, which has been opined to have been used in committing the crime.

6. The appellant in his statement, under Section 313 of the Code of Criminal Procedure Code, denied that he was arrested in village Daroti from the house of his daughter and claimed that he had been arrested from

his own village. He has stated that he was present on the spot, when the police came and started conducting the investigation, including inquest.

7. Admittedly, the appellant had been arrested on 24.2.2003 itself (the date of commission of crime), but the record of the investigation, which has been made available to the Court, does not show that he was arrested from the house of his daughter in village Daroti on 24.2.2003, as testified by PW-12 ASI Gopal Singh. PW-11 HC Roshan Lal, who went to the spot after PW-1 Bhagwan Singh telephonically informed the Police Post Tikkar about the incident, recorded the statement under Section 154 of the Code of Criminal procedure of PW-1 Bhagwan Singh at 4.50 p.m. The record of the statement is Ext. PA. The time of the recording of this statement is written as '4.50 p.m.' below the dated signature of PW-11 HC Roshan Lal. This statement was sent to the Police Station Rohru for the registration of the case. As per entry against column No. 3 (b) of the FIR Ext. PG, the statement reached the Police Station at 6.30 p.m. Thereafter the FIR was recorded. After the case was registered, the case was assigned to PW-11 Roshan Lal, HC for investigation. It has not come in evidence as to when and at what time this file was handed over to PW-11 HC Roshan Lal. It took one hour and forty minutes to carry the statement Ext. PA from the spot to the Police Station, because the time of recording of the statement is 4.50 p.m. and the time of the receipt of the said statement at the Police Station is 6.30 p.m., as noticed hereinabove. At-least thirty minutes time is supposed to have been consumed in writing formal FIR Ext. PG. It would have been only thereafter that someone started with the case file from the Police Station to hand it over to PW-11 Roshan Lal, HC on the spot. There is nothing on the record showing as to who carried the file from the Police Station and by what mode he travelled. Because the carrying of the statement from the spot to the Police Station took one hour and forty minutes, at-least this much time can be presumed to have been consumed

in carrying the file from the Police Station to the spot. It appears from the record that PW-11 Roshan Lal, HC conducted the inquest, filled in the prescribed forms of inquest report, prepared the site plan, recorded the statements of PW-2 Ramesh and PW-3 Salochna under Section 161 of the Code of Criminal Procedure and also made inquiries with other persons, seized the allegedly broken lock and prepared its memo, made that lock into a parcel and sealed that parcel on the spot. That means he remained on the spot till late in the night of 24.2.2003.

8. PW-12 ASI Gopal Singh claims that on 24th February, 2003 the file was handed over to him for further investigation by PW-11 HC Roshan Lal. That means the file was handed over to him on 24.2.2003 very late in the night. PW-12 ASI Gopal Singh nowhere says that he went to Daroti Village the same night and arrested the appellant. However, from the record it is clear that the appellant had been arrested on 24.2.2003. This fact finds mention in an application, which was submitted to the Judicial Magistrate on 25.2.2003 for seeking police remand of the appellant. This application purports to be written and signed by PW-12 ASI Gopal Singh. It is not stated in the application that the appellant had been arrested by ASI Gopal Singh from the house of his (appellant's) daughter in village Daroti.

9. From the facts and the circumstances as noticed hereinabove, it appears that the appellant had been arrested on 24.2.2003 probably from his own village as claimed by him. In any case, in view of the above stated position, which indicates that PW-12 Gopal Singh, ASI could not have any time left with him on 24.2.2003 to go to village Daroti in search of the appellant and to have arrested him from that village, as claimed by him in his deposition, it cannot be said that it stands proved beyond reasonable doubt that the appellant was arrested from the house of his daughter in village Daroti. If it is so, the circumstance that the appellant absconded

from his village soon after the murder of his wife and took refuge at the house of his daughter in village Daroti does not stand proved beyond reasonable doubt.

10. Above stated position apart, there is no evidence on record that the appellant disappeared from his own village soon after the death of the deceased or was not seen there by anybody. PW-11 Roshan Lal, HC, who went to the village on 24.2.2003 and remained busy conducting the investigation presumably till late in the evening, does not say that the appellant was not there or that he wanted to arrest him but he had absconded.

11. Coming to the next circumstance, viz. recovery of weapon of offence at the instance of the appellant, prosecution has examined four witnesses namely, PW-4 Mauji Ram, PW-5 Guddu, PW-6 Chet Ram and PW-12 Gopal Singh. According to the prosecution, it was on 27.2.2003 that the appellant made disclosure statement leading to the discovery of knife Ext. P-11. The statement was allegedly made by the appellant in the presence of PW-4 Mauji Ram and one Dhan Sukh. Dhan Sukh was not examined by the prosecution. Mauji Ram (PW-4) stated that the appellant made statement that he had kept hidden a knife near the window in the house of Guddu. PW-12 ASI Gopal Singh stated that when he interrogated the appellant on 27.2.2003, he made statement that he had kept hidden a knife in the house of his relative Guddu in village Daroti and only he (appellant) had the knowledge of this fact. The statement had been reduced into writing. The record of the statement is Ext. PD. As per this record, the appellant stated that he had kept hidden the knife in the household articles kept in a window in the house of Guddu in village Daroti. The contents of Ext. PD are at variance with what PW-4 Mauji Ram and PW-12 ASI Gopal Singh have testified and even the statements of these two witnesses about the exact place where the knife had been kept hidden

are at variance. According to PW-4 Mauji Ram, appellant stated that he had kept the knife in the house of Guddu near a window. Recorded statement Ext. PD reads that the knife had been kept hidden under household articles in the window. PW-12 ASI Gopal Singh does not make mention of any window in his testimony. What he says is that the appellant told that he had kept concealed the knife in the house of his relative Guddu and only he had the knowledge of the concealment of that knife. These contradictions in the statements of the two witnesses and Ext. PD render the story of recovery of knife at the instance of the appellant quite doubtful. Not only this, Mauji Ram (PW-4) appears to be overenthusiastic to support the prosecution, for the reasons best known to him. According to PW-12 ASI Gopal Singh, the knife was recovered pursuant to the aforesaid statement made in the presence of PW-5 Guddu and PW-6 Chet Ram and the same was taken into possession vide memo. Ext. PR. This memo. Ext. PR also purports to be attested by Guddu and Chet Ram only, but Mauji Ram PW-4 says that the knife was recovered from the house of Guddu in his presence.

12. The evidence with regard to the recovery of knife from the house of Guddu (PW-5) is also doubtful. According to PW-12 ASI Gopal Singh, the appellant got recovered the knife from a window in the house of Guddu and the same was lying in that window along-with some other articles like quilts etc. He does not say that it was lying hidden under the quilts. PW-4 Mauji Ram, who even though not a witness of recovery of the knife, per memo. Ext. PR and per testimony of PW-12, says that the knife was taken out by the police from the house of Guddu at the instance of the appellant. He does not say that the knife was recovered from any window or it was lying mingled with other articles or concealed under other articles such as quilts etc. The two witnesses of recovery namely, PW-5 Guddu and PW-6 Chet Ram have not supported the prosecution version. Both of

them have denied that any knife was recovered from the house of Guddu at the instance of the appellant or otherwise.

13. Thus the circumstance regarding recovery of the weapon of offence at the instance of the appellant can also not be said to have been established beyond reasonable doubt.

14 Not only that the two circumstances, upon which the conviction of the appellant is based, are not established beyond reasonable doubt, but there are also several other circumstances, which make the prosecution version highly doubtful. Firstly, according to the prosecution, there were three eye-witnesses, namely, PW-1 Bhagwan Singh, PW-2 Ramesh and PW-3 Salochna. All the three were cross-examined, with the leave of the Court, by the prosecution. PW-2 Ramesh and PW-3 Salochana, the son and the daughter-in-law, respectively, of the deceased and the appellant, did not support the prosecution version, in its totality. PW-1 Bhagwan Singh made a statement, which is contrary to the initial version given by him to the police vide statement Ext. PA (under Section 154 of the Code of Criminal procedure). From the statement of the witness it appears that he is short sighted, because soon after the incident he had been operated upon for cataract, as admitted by him. His statement besides being in conflict with the earliest version given by him to the police vide Ext. PA, is self-contradictory, inconsistent and incoherent. He has stated that he saw the appellant dragging his wife by hair towards the field of Pardeep Kumar through his (appellant's) courtyard. At the same time he says that when he reached the spot, the deceased was lying dead and her head was in the lap of her son Ramesh (PW-2). It is also his statement that when he went to the Vernadah of the deceased on noticing someone dragging something through the courtyard of Mast Ram, he heard the cries of Ramesh coming from his house. Now, when he noticed someone dragging something through the courtyard of the appellant and immediately

went to the Verandah of the appellant and there he heard the cries of Ramesh from a room of the house of the appellant, how could Ramesh have been present in the field of Pardeep Kumar with the head of his deceased mother in his lap, when the witness went to that field from the Verandah.

15. The prosecution alleged that before killing the deceased the appellant locked his son Ramesh (PW-2) in his room so that he did not come to her rescue. That lock was allegedly broken by PW-3 Salochna, wife of PW-2 Ramesh. Ramesh and Salochana have denied this allegation in their testimony in the Court. The lock Ext. P-10 was produced in the Court. Neither any witness testified that the lock was broken nor did the trial Judge record the observation, when the lock was produced before him and exhibited, that it was broken.

16. Even though it is alleged that the deceased was dragged from her kitchen through courtyard to the field of Pardeep Kumar, which as per site plan Ext. PK is at a distance of eighty feet from the kitchen, no dragging marks were noticed on the spot by anybody, because no witness, including the Investigating Officer, has stated that any dragging marks were there nor is there any mention of any such marks in the site plan Ext. PK. No blood was found on the spot. Admittedly, snow was there on the spot, but it was supposed to have turned red with the blood of the deceased. It is the prosecution's own case that the death had occurred within a few minutes because of excessive bleeding. The blood was supposed to have turned the snow red at the site, the dead body lay. However, nobody has said that snow at the site had turned red. In the site plan Ext. PK also there is no mention to this effect. PW-1 Bhagwan Singh has, no doubt, said that blood was there on the snow, but when further questioned he stated that he could not say whether there was lot of blood on the spot.

17. The appellant allegedly dragged the deceased holding her by the hair. However, the doctor, who conducted the post mortem examination, namely PW14 Rajiv Roy, testified that there was no evidence indicative of the pulling and dragging of the lady by her hair.

18. Taking into account all the facts and the circumstances, as noticed above, we are of the considered view that the case of the prosecution does not stand established beyond reasonable doubt. Consequently the appeal is accepted, judgment of the trial Court convicting and sentencing the appellant of the offence under Section 302 of the Indian Penal Code is set aside and the appellant is acquitted. The appellant being in custody, is ordered to be set at liberty immediately, in case his detention is not required in any other case.

(Surjit Singh)
Judge

August 22, 2007 (BC)

(Kuldip Singh)
Judge